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Attorney for Montana Securities and Insurance Departments

BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

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IN THE MATTER OF:	) CASE NO. SEC-2007-71
	) (C-08-23-07-251)
EHRENKRANTZ KING NUSSBAUM	)
FINANCIAL SERVICES	) NOTICE OF PROPOSED AGENCY
135 Crossways Park Drive	) DISCIPLINARY ACTION
Woodbury, NY, 11797	) AND OPPORTUNITY FOR HEARING
a broker-dealer firm;	)
	)
LARRY LUBARSKY, individually and in	)
his capacity as a securities salesperson for	)
Ehrenkrantz King Nussbaum	)
Financial Services;	)
	)
IGOR SIROTA, individually and in his	)
capacity as a securities salesperson for	)
Ehrenkrantz King Nussbaum Financial	)
Services;	)
	)
THOMAS GIUGLIANO, individually and	)
in his capacity as a securities salesperson	)
for Ehrenkrantz King Nussbaum Financial	)
Services;	)
	)
GEORGE TAMBORELLO, individually	)
and in his capacity as a supervisor and	)
securities salesperson for Ehrenkrantz King	)
Nussbaum Financial Services;	)
	)
GABRIEL IEZZONI, individually and in	)
his capacity as a supervisor and as a	)
securities salesperson for Ehrenkrantz King	)
Nussbaum Financial Services;	)
	)
Respondents.	)

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Staff of the Securities Department (Department) of the office of the State Auditor as Commissioner of Securities of the state of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§ 30-10-101, *et seq.*, MCA (2007) is proposing to the Commissioner that he take specific action against Ehrenkrantz King Nussbaum Financial Services (EKN), with a principle place of business located at 135 Crossways Park Drive, Woodbury, NY 11797, Larry Lubarsky (Lubarsky), Igor Sirota (Sirota), Thomas Giugliano (Giugliano), George Tamborello (Tamborello), and Gabriel Iezzoni (Iezzoni) named above for violations of the Montana Securities Act. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, 30-10-309, MCA (2007.)

In particular, the Securities Department's (Department) staff are recommending specific action against EKN, Lubarsky, Sirota, Giugliano, Tamborello, and Iezzoni including imposition of appropriate fines, appropriate restitution with interest and revocation or suspension of Respondents' registrations and licenses pursuant to the provisions of the Montana Securities Act.

Service of process is pursuant to § 30-10-107 (8), MCA (2007).

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### **ALLEGATIONS**

1. The time period relevant to this action is July 2004 through December 2005.
2. EKN has been registered as a broker/dealer firm in the state of Montana since on or about May 27, 2003, pursuant to the requirements of Montana's Securities Act.

3. Lubarsky has been a registered salesperson in the state of Montana since on or about August 16, 2004. Lubarsky was employed as a securities salesperson by EKN from on or about November 2001 through on or about November 2005. The CRD indicates he left his employment with EKN voluntarily.

4. Sirota has been registered as a salesperson in the state of Montana from on or about October 16, 2001 to December 31, 2003 and from on or about July 7, 2004 to the present. Sirota was employed by EKN from on or about July 2002 until on or about October 2005. The CRD indicates he left his employment with EKN voluntarily.

5. Giugliano has been a registered salesperson in the state of Montana since on or about January 21, 2004. Giugliano has been employed with EKN since October 2001.

6. Tamborello has been registered sporadically as a salesperson in the state of Montana since 1997. Tamborello is not currently registered as a salesperson in Montana. Tamborello was registered as a salesperson in the state of Montana from June 25, 2003 until on or about September 13, 2005. Tamborello was Lubarsky's immediate supervisor from July 2004 until July 28, 2005.

7. Iezzoni is not now nor has he ever been registered as a salesperson in the state of Montana. Iezzoni was Lubarsky's immediate supervisor from July 28, 2005 to October 24, 2005.

8. On August 24, 2006, the Department received a complaint from a Montana citizen (Complainant) regarding actions taken by Complainant's former securities salesperson, Lubarsky. In the complaint, Complainant alleges Lubarsky excessively traded Complainant's account at EKN. Complainant further alleges that this excessive trading resulted in investment losses for Complainant and excessive commissions for EKN and Lubarsky.

9. The Department investigated the Complainant's allegations using standardized investigation methods, including written requests to EKN seeking certain documents and written statements from Lubarsky regarding the allegations by Complainant. On December 7, 2006 EKN responded to the request and provided most of the requested documents.

10. EKN failed to provide a new account form for Complainant's account. Lubarsky claimed Complainant was seeking a "somewhat more aggressive investment strategy." Complainant alleges the account was to be managed in a manner that was "pretty conservative" and according to investment objectives of "growth, income and capital appreciation." Complainant was 64 years of age at the time the EKN account was opened.

11. Through its investigation of the complaint, the Department determined Lubarsky caused trading to occur in Complainant's account while Lubarsky was not registered in Montana to conduct such securities business.

12. Through its investigation of the complaint, the Department analyzed the documents provided by EKN, including confirmations, monthly statements, prospectuses, exception reports, correspondence, complaints, compensation schedules, Montana client list, switch letters, EKN's policies and procedures manuals, and EKN's supervisory manuals.

13. Complainant opened the EKN account on or about July 2004. EKN alleges the new account forms for this account disappeared when "EKN was raided when a select group of brokers including one of the managers joined another firm. EKN believes that these individuals removed or caused to be removed customer files from its premise."

14. The first monthly account statement in July 2004 indicates Complainant's representative was Igor Sirota. At this time, Sirota was registered as a salesperson in Montana and Lubarsky was not. Beginning in September 2004, Lubarsky and Siorta are both listed on

trade confirmations and monthly account statements as representatives for the account.

Beginning in October 2005, after Lubarsky left EKN, Thomas Giugliano was listed as the account representative on trade confirmations and monthly account statements. Complainant transferred the assets in this account away from EKN in November 2005 and the account was closed in December 2005.

15. The Department's review of the documentation provided indicated that between July 2004 and November 2005, Complainant's account had 195 trades. These trades resulted in commissions of approximately \$133,310.31. In addition to commissions, the account was assessed margin interest and other fees of approximately \$7,866.79. In total, the account had commissions and fees of approximately \$141,177.10 in the sixteen months it was active.

16. The Department's review indicated that during the relevant time, the account had an average equity of approximately \$172,184.85. Over the 16-month period, the account had a cost-to-equity-maintenance ratio (CEMR<sup>1</sup>) of 81.99%. This means the account would have needed to earn 81.99% in the 16 months just to break even to pay the commissions and fees associated with the account. Annualized, the CEMR for the account was 61.49%. According to the Public Investors Arbitration Bar Association (PIABA<sup>2</sup>) an annualized CEMR of 4% in an investment account indicates there is an inference of churning; a CEMR of 8% indicates there is

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<sup>1</sup> CEMR is calculated by dividing the average account equity by the total commissions during a 12-month period. According to PIABA, a CEMR of 4% in an investment account indicates there is an inference of churning; a CEMR of 8% indicates there is a presumption of churning; and a CEMR of 12% is conclusive that excessive trading is occurring.

<sup>2</sup> According to PIABA, the turnover rate is the number of times the average net equity is used to purchase securities. Volume, rather than cost, is being measured. A turnover rate of 2 creates an inference of churning, a turnover rate of 4 creates a presumption of churning and a turnover rate of 6 is conclusive of churning. PIABA, Public Investors Arbitration Bar Association, whose mission is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process and creating a level playing field for the public investor in securities and commodities arbitration. Courts and arbitrators often rely upon PIABA expertise in cases involving excessive trading.

a presumption of churning; and a CEMR of 12% is conclusive that excessive trading is occurring.

17. Total purchases of securities in the account were approximately \$2,766,193.22.

As a result, the total turnover rate for the account was 16.07. A turnover rate of 16.07 means that during the 16 months the account was active the account's total assets were used 16.07 times to purchase securities. Annualized, the turnover rate was 12.05. According to PIABA, an annualized turnover rate of 2 creates an inference of churning, a turnover rate of 4 creates a presumption of churning and a turnover rate of 6 is conclusive of churning.

18. The account suffered an economic loss of approximately \$62,494.

19. EKN indicated that Lubarsky was the subject of one other complaint while employed at the firm. This complaint is not reported on the CRD, and the documentation provide by EKN does not clarify the subject and disposition of the complaint.

### **CONCLUSIONS OF LAW**

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to §§ 30-10-107, 2-15-1903, MCA.

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, MCA.

3. The administration of the Securities Act of Montana, § 30-10-101, *et seq.*, MCA is under the supervision and control of the Securities Commissioner pursuant to § 30-10-107, MCA.

4. The Commissioner shall administer the Securities Department to protect investors, pursuant to § 30-10-102, MCA.

5. EKN is a Montana-registered broker dealer as defined pursuant to § 30-10-103(1), MCA, and as required pursuant to § 30-10-201, MCA, and was so registered during the relevant time period.

6. Lubarsky is a Montana-licensed securities salesperson as defined pursuant to § 30-10-103 (20), MCA, and as required by § 30-10-201, MCA, and was so licensed beginning on or about August 16, 2004.

7. Sirota is a Montana licensed securities salesperson as defined pursuant to § 30-10-103 (20), MCA, and as required by § 30-10-201, MCA, and was so licensed during the relevant time period.

8. Giugliano is a Montana licensed securities salesperson as defined pursuant to § 30-10-103 (20), MCA, and as required by § 30-10-201, MCA, and was so licensed during the relevant time period.

9. Tamborello was a Montana licensed securities salesperson as defined pursuant to § 30-10-103 (20), MCA, and as required by § 30-10-201, MCA, and was so licensed during the relevant time period.

10. Iezzoni is not now nor has he ever been a Montana licensed securities salesperson as defined pursuant to § 30-10-103 (20), MCA, and as required by § 30-10-201, MCA.

11. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-301(1)(b), MCA when they traded excessively in Complainant's account for the purpose of generating excessive commissions for themselves rather than for the protection of the Complainant's interests.

12. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-301(1)(b), MCA, when they omitted the material fact that a trading strategy that was excessive and done for the purpose

of generating commissions was contrary to Complainant's investment objectives and resulted in excessive commissions.

13. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-301(1)(b), MCA when they recommended trades that were unsuitable for Complainant, were contrary to Complainant's investment objectives and resulted in excessive commissions.

14. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-301(1)(c), MCA by engaging in an act, practice, and course of business that acted as a fraud on Complainant by trading excessively in Complainant's account for the purpose of generating excessive commissions for themselves, rather than for the protection of the client's interests.

15. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-301(1)(c), MCA by engaging in an act, practice, and course of business that acted as a fraud on Complainant of unsuitable recommendations in Complainant's account for the purpose of generating excessive commissions for themselves, rather than for the protection of the client's interests.

16. Lubarsky violated § 30-10-301 (1) (b), MCA by omitting the material fact that he was not registered as a securities salesperson for the first month he traded in Complainant's account.

17. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-201 (13) (g) and ARM § 6.10.126 (1) (b) and (2) (f), when in the commission of an unethical practice, they executed 195 trades in a 16-month period, resulting in an annualized turnover rate of 12.05 and an annualized CEMR of 61.49% in contravention of Complainant's conservative risk tolerance.

18. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-201 (13) (g) and ARM § 6.10.126 (1) (c) and (2) (f), when in the commission of an unethical practice, they made

unsuitable trading recommendations in contravention of Complainant's conservative risk tolerance.

19. EKN, Sirota, Lubarsky, and Giugliano violated § 30-10-201 (13) (g) and ARM § 6.10.126 (1) (k) and (2) (f), when in the commission of an unethical practice, they charged excessive fees to the Complainant's account.

20. EKN, Tamborello, and Iezzoni violated § 30-10-201(13)(k), MCA, by failing to reasonably supervise Sirota, Lubarsky and Giugliano by allowing them to commit fraudulent acts, engage in unethical and dishonest acts in violation of Montana's Securities Act, including make material omissions, make unsuitable recommendations, engage in excessive trading, and charge excessive fees.

21. EKN violated § 30-10-201(13)(i), MCA, by failing to timely respond to the Department's request for information and failing to produce certain required records pursuant to its investigation of Complainants' allegations.

22. EKN violated § 30-10-201(13)(i), MCA and § 6.10.138, ARM by failing to make, maintain and preserve books and records in compliance with the United States Securities and Exchange Commission Rules 17a-3 (17 CFR 240.17a-3 (1998), 17a-4 (17 CFR 240.17a-4 (1998), and 15c2-11 (17 CFR 240.15c2-11 (1998) ).

#### **RELIEF SOUGHT**

1. Order Respondents to pay restitution to Complainant in this case, including 10% interest from the date of the wrong-doing, pursuant to § 30-10-309, MCA.

2. Order Respondents EKN, Sirota, Lubarsky and Giugliano to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(b), MCA, pursuant to § 30-10-305(3), MCA.

3. Order Respondents EKN, Sirota, Lubarsky and Giugliano to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(c), MCA, pursuant to § 30-10-305(3), MCA.

4. Order that the Montana registrations and licenses of Respondents EKN, Sirota, Lubarsky and Giugliano be suspended, revoked and or denied for violating the provisions of § 30-10-301(1)(b), MCA and § 30-10-301(1)(c), MCA pursuant to § 30-10-201(13)(b), MCA.

5. Order Respondents EKN, Tamborello and Iezzoni to pay fines not to exceed \$5,000 for violating § 30-10-201 (13) (k), MCA pursuant to § 30-10-201(18), MCA;

8. Order Respondents EKN, Sirota, Lubarsky and Giugliano to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201(13)(g), MCA, and ARM § 6.10.126 (1) (b), (c), (k) and (2)(f) pursuant to § 30-10-201(18), MCA;

9. Order Respondent EKC to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201(13)(i), MCA, and ARM § 6.10.138.

10. Any other such relief allowed by law or required by justice.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors to:

1. Issue a cease and desist order barring EKN, Sirota, Lubarsky, Giugliano, Tamborello, and Iezzoni from further violations of the Act;

2. Suspend or revoke EKN's broker-dealer license;

3. Suspend or revoke salesperson registration for Sirota, Lubarsky, Giugliano, Tamborello and Iezzoni;

4. Order Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

5. Order Respondents to pay restitution to Complainant in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses Complainant incurred, as supported by the evidence and determined at a hearing of this matter; and

6. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§ 2-4-601, MCA *et seq.*, including § 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 15 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a

hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days, will result in the entry of a default order imposing the disciplinary sanctions against you and your license, without further notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 24<sup>th</sup> day of October 2007.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities and Insurance

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing and Cease and Desist Order and the Temporary Cease and Desist Order to the following person by depositing the same in the U.S. Mail, certified, return receipt requested, on this 31<sup>st</sup> day of October, 2007.

Ehrenkrantz King Nussbaum Financial Services  
135 Crossways Park Dr.  
Woodbury, NY 11797

Larry Lubrasky  
3205 Emmons Avenue, Apt #6D  
Brooklyn, NY 11235

Igor Sirota  
69 Walter Avenue  
Hicksville, NY 11801

Thomas Giugliano  
1 Seaward Court  
Cold Spring Harbor, NY 11724

George Tamborello  
1082 Wantagh Ave.  
Wantagh, NY 11793

Gabriel Iezzoni  
20 East Half Hollow Road  
Dix Hills, NY 11746

  
State Auditor's Office

BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

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IN THE MATTER OF: )

)  
EHRENKRANTZ KING NUSSBAUM )  
FINANCIAL SERVICES )  
135 Crossways Park Drive )  
Woodbury, NY, 11797 )  
a broker-dealer firm; )

)  
LARRY LUBARSKY, individually and in )  
his capacity as a securities salesperson for )  
Ehrenkrantz King Nussbaum )  
Financial Services; )

CASE NO. SEC-2007-71  
(C-08-23-07-251)

)  
IGOR SIROTA, individually and in his )  
capacity as a securities salesperson for )  
Ehrenkrantz King Nussbaum Financial )  
Services; )

TEMPORARY CEASE AND  
DESIST ORDER

)  
in his capacity as a securities salesperson )  
THOMAS GIUGLIANO, individually and )  
for Ehrenkrantz King Nussbaum Financial )  
Services; )

)  
GEORGE TAMBORELLO, individually )  
and in his capacity as a supervisor and )  
securities salesperson for Ehrenkrantz King )  
Nussbaum Financial Services; )

)  
GABRIEL IEZZONI, individually and in )  
his capacity as a supervisor and as a )  
securities salesperson for Ehrenkrantz King )  
Nussbaum Financial Services; )

)  
Respondents. )

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The Commissioner of Securities for the State of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§ 30-10-101, *et seq.*, Montana Code Annotated (2007)(MCA), hereby issues the following order and notice of right to a public hearing for Respondents Ehrenkrantz King Nussbaum Financial Services (EKN), Larry Lubarsky (Lubarsky), Igor Sirota (Sirota), Thomas Giugliano (Giugliano), George Tamborello (Tamborello), and Gabriel Iezzoni (Iezzoni). This Order is based upon the good cause shown in the allegations of fact and conclusions of law set forth in the Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing in this case.

### **ORDER**

Pursuant to § 30-10-305(1)(a), MCA, it appears to the Commissioner that the above named Respondents, Ehrenkrantz King Nussbaum Financial Services (EKN), Larry Lubarsky (Lubarsky), Igor Sirota (Sirota), Thomas Giugliano (Giugliano), George Tamborello (Tamborello), and Gabriel Iezzoni (Iezzoni), have engaged in or are about to engage in an act or practice constituting a violation of the Securities Act of Montana, and pursuant to § 30-10-102, MCA, it is in the public interest to ORDER Ehrenkrantz King Nussbaum Financial Services (EKN), Larry Lubarsky (Lubarsky), Igor Sirota (Sirota), Thomas Giugliano (Giugliano), George Tamborello (Tamborello), and Gabriel Iezzoni (Iezzoni) to CEASE AND DESIST from engaging in the following actions:

1. Making untrue statements or omissions of material facts by EKN, Sirota, Lubarsky, Giugliano, and Tamborello that would make the statements made, in the light of the circumstances under which they are made, misleading in violation of § 30-10-301 (1) (b), MCA;

State of Montana, he or she must comply with the requirements of Application of American Smelting and Refining, Co., 164 Mont. 139, 520 P.2d 103 (1973).

SO ORDERED this 30<sup>th</sup> day of October, 2007.

  
\_\_\_\_\_  
LYNNE EGAN  
Deputy Securities Commissioner

cc. Ehrenkrantz King Nussbaum Financial Services  
Larry Lubarsky  
Igor Sirota  
Thomas Giugliano  
George Tamborello  
Gabriel Iezzoni